


COMPARISON OF MONTANA INDIAN RESERVATION RESERVED WATER RIGHTS COMPACTS

 RESERVATION							
	Blackfeet	Crow	Flathead	Fort Belknap	Fort Peck	Northern Cheyenne	Rocky Boy
Source: 2010 US Census of Housing and Population CPH-1-28							
Population within Reservation Boundaries							
Tribal	8,944	5,322	7,042	2,704	6,714	4,406	3,221
Non-Tribal	1,461	1,541	21,317	147	3,294	383	102
Total Population	10,405	6,863	28,359	2,851	10,008	4,789	3,323
Source: Indian Education for All—MT Office of Public Instruction 2009							
Land w/in Reservation Boundaries (Acres)							
Tribal Trust	311,175	404,172	653,214	210,954	413,020	326,547	122,259
Tribal Allotments	701,816	1,166,406	58,729	406,533	516,092	113,277	0
Other (State/Federal/Private)	512,721	894,336	531,057	28,089	1,164,012	4,951	0
Total Land	1,525,712	2,464,914	1,243,000	645,576	2,093,124	444,775	122,259
Reserved Water Right Award (Acre Feet)							
On Reservation	86,880	800,000	16,300,951	500,000	1,052,472	89,530	20,000
Off Reservation	0	0	31,774,647	0	0	0	0
Total (Data Source: See Items 1 or 2 below)	(1) 86,880	(1) 800,000	(2) 48,075,598	(1) 500,000	(1) 1,052,472	(1) 89,530	(1) 20,000

Compact Details

	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe
On Reservation Water Rights Administration	No	No	Yes	No	No	No	No
Off Reservation Aboriginal Treaty Rights	No	No	Yes	No	No	No	No
Relinquish Irrigation Water Rights to Tribe	2009 / No	1999 / 2010	No / No	2001 / No	1985 / 1994	1991 / 1992	1997 / 1999
Ratified Montana Legislature / U.S. Senate							

Statistics:

Acre Feet / Tribally Owned Acre	0.09	0.51	67.53	0.81	1.13	0.20	0.16
Acre Feet / Tribal Member	9.71	150.32	6,826.98	184.91	156.76	20.32	6.21

(1) Negotiating Tribal Water Rights: Fulfilling Promises In The Arid West, By Bonnie G. Colby, John E. Thorson, Sarah Britton

(2) Flathead Reservation based upon Concerned Citizens of Western Montana Analysis. Note: the compact commission has refused to provide these numbers.

EXHIBIT
DATE 3/27/2013
26
629

Mr. Chairman and members of the Judiciary committee, my name is Michael Gale, G A L E and I live on State taxed, fee-simple land in the County of Lake, within the boundaries of the Flathead Reservation.

That was the sound of the 1000 pages of this compact that were not included in House Bill 629 for your review. We have been repeatedly told, by the compact commission, that any quantification of the Flathead Indian Federal Reserved Water Rights is contained somewhere within those missing pages of appendices and abstracts.

This compact, to define water rights, is the result of a 1908 US Supreme Court case known as the Winters Decision that states "when the federal government sets aside land, from the public domain, it is implied they have also set aside enough water to fulfill the purpose for the reserved land – which is called 'Federal Reserved Water Rights'." This Compact does not define a stated purpose for the Flathead Indian Reservation so how can a water requirement be properly fulfilled or quantified?

In My Opinion, the Compact Commission has clearly exceeded its authority.

The Compact Commission added Off-Reservation "Stevens Treaty" rights to the On-Reservation Federal Reserved Water Rights while making no distinctive difference in the Compact. They are not homogeneous and cannot be comingled within the same document by the commission for adjudication. The confederated tribes have a right to enough water to fulfill the purpose of their reservation (once it's defined!), as required by the Winters Doctrine and as negotiated for the other 6 Indian reservations in Montana. Reserved Water Rights for a reservation fall under State control per the McCarron Act and must be fulfilled under Federal guidelines; while, off-Reservation, Treaty granted fishing and hunting rights, "for access and harvest", fall under Federal Court control – an oil and water condition that is outside the State Compact Commission's mandate and authority.

The Irrigation Stipulation Agreement between the tribe and the irrigators, now titled the "Water Use Agreement", moves water rights from the land, the individual irrigators and the Flathead Irrigation Project, to the Tribes. It represents 1/3 of this compact and is missing from this bill – an "unconstitutional taking" without compensation as currently evidenced by Judge McNeil's findings in District court. Obviously, this would not be a component had the 2000-2002 State Compact Commission remained in the game and performed this current compact negotiation. The "tribal reserved

water rights" do not include, nor do they oversee, an irrigation project on fee-simple, non-trust land. Purporting to protect the irrigation project by absorbing these non-trust lands and water into the reserved water right adjudication is an unconstitutional taking by the tribe and has now been blessed by the commission – which includes four legislators, only one of whom objected to send this compact to the Legislature. Contrary to current opinion, the Federal government and the Tribes do not own all the water on, under, around or near the Flathead reservation as asserted by the tribes and capitulated to by the State Compact Commission. Signing a blank check would not be prudent.

The State Compact Commission agreed to the tribal creation of a NEW water administration system known as the Unitary Management Ordinance that clearly – once established – removes citizens of the State of Montana out from under the State constitutionally mandated and Legislature established Water Rights adjudication system (through the DNRC and the Water Court) and places them under a non-state, politically controlled board on the reservation with appeal to Federal court only. This State legislature cannot arbitrarily remove my Montana State Constitutional rights from me to placate another people under whom I have NO rights. A 'fictional', political board of "five" locals with final control of future water use is not a 'constitutional' solution. The "regulatory vacuum", as reported by Mr. Jay Weiner in his March 11th rebuttal to Senator Verdell Jackson's email of March 8th is a *temporary condition* – a suspension, not an elimination, that will be removed (refilling the 'vacuum') following the **quantification** of the Reservation's water rights and does NOT require a new, political body. This is absolutely "precedent setting" for the entire United States, supported by no previous case law, legislative mandate nor example!

The Compact Commission fails to acknowledge that this is an OPEN RESERVATION. It is approximately 40% fee simple/fee patent, non-tribal land with roughly 75% non-tribal population, and, as far I can determine, is the highest percentage by far, of non-tribal members on any reservation in the United States over 50,000 acres. The actual reservation is **diminished** by homesteaded and fee-simple, non tribal property and therefore the Federally Reserved Water Rights, as mandated by the Winters Doctrine, must also be diminished; including the "Instream Flows" for fisheries.

I urge the committee to "Just Say No" to this Compact, as presented. It is flawed from the get-go, based on a lie, a house of cards built on sand - not a

rock, is incomplete, a total diversion from the previously successful original legislative process as defined in 1979 and is simply unconstitutional.

Mr. Chairman, with your permission, I'd like to provide the committee with these 477 signed petitions against this Compact from friends and neighbors (throughout the 11 western counties of Montana) who could not be here today to testify and a copy of my testimony, including a summary chart of all 7 Montana Tribal Water Rights Compacts that I made last November to help me understand the scope of this last outrageous compact as compared to the previous 6 compacts.

Thank you.